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RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALBERT ANDREW MURRER III

Appeal 2008-1407
Application 10/629,322
Technology Center 1600

Oral Hearing Held: Tuesday, September 16, 2008

Before TONI R. SCHEINER, DONALD E. ADAMS, and
ERIC B. GRIMES, *Administrative Patent Judges*.

ON BEHALF OF THE APPELLANTS:

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The above-entitled matter came on for hearing on Tuesday, September 16, 2008, commencing at 9:05 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Kevin Carr, Notary Public.

PROCEEDINGS

2 JUDGE SCHEINER: Good morning.

3 MR. WILSON: Good morning.

4 If it pleases the Board today, we're going to hear an appeal in 2008-
5 1407. The claims at issue in this case are directed to a container system for -
6 - principally for carrying hazardous material -- biohazardous material, more
7 specifically.

8 Some critical claim elements are a soft-sided outer container that has
9 vertical walls and a bottom. And if you look at the Specification at
10 Paragraph 009, the soft-sided outer container is defined soft-sided as non-
11 rigid, bends or folds easily. And if I could direct the Board to Figure 4 of
12 the Application, you can see that the soft-sided outer container can just fold
13 down, showing the container flat. It just kind of folds down into a heap.
14 There's no, like, specialized lines of folding or anything. That's sort of an
15 indication of the soft-sidedness and that feature.

Another requirement is that the walls -- the vertical sides and the base
be integrally formed. And the soft -- and that portion, the soft-sided outer
shell, be at least partially collapsible when it's unsupported.

19 There are additional limitations that are not going to be at issue
20 here -- the securable lid and the inner liner of water-tight material. And,
21 finally, there's an inner frame. And this inner frame has rigid walls that are
22 at least partially collapsible.

23 Now, the -- basically, the rejections in this case are all obviousness
24 rejections. And they all are based on a primary and secondary -- common
25 primary and secondary reference, Redzisz in view of Zeddis. According to
26 the Examiner, Redzisz -- the box in Redzisz has all the -- meets all the

1 limitations of the claims, except for the collapsible inner frame. And the
2 Examiner looks to Zeddies and says, "That's a similar looking box, but has a
3 collapsible inner frame." And he says, "Therefore, it's obvious that there's
4 motivation to, then, take the frame from, from Zeddies and apply it to the
5 box in Redzisz."

6 Well, we have two issues that we're going to bring up before the
7 Board regarding this rejection. First of all, the limitation soft-sided outer
8 shell. The Examiner has really cited to nothing to support soft-sided outer
9 shell in Redzisz. If you look at the Examiner's Answer on Page 4, Item No.
10 2, it says, "A collapsible soft-sided outer shell --," describing what the
11 claims cover. It lists all the claim language there, plurality of vertical walls,
12 blah, blah, blah. And there's a citation set, which says, "60, Figures 10 and
13 11, Paragraph 0033, Claim 14." If you look at that set of reference -- that
14 citation set, it refers only to the water-tight inner lining. It has nothing to do
15 with soft-sided outer shell. And we challenge the Examiner on that and say
16 there's no citation to any support for a soft-sided outer shell.

17 Now, you can't -- it doesn't look to me like a soft-sided outer shell. I
18 mean, if you look at this picture, it looks pretty solid here. You can see the
19 box, itself. The walls hold steady. They look very solid. And, then, when
20 you start to see the thing fold, there's a compression. And the bottom of it
21 has a crease that pops up, but the sides basically keep their shape. The thing
22 just compresses in along these fixed lines. Essentially, there's -- when it
23 compresses in, there's basically an internal integral frame here that allows it
24 to collapse. The collapsing is the movement of sides relative to each other
25 and not a collapsing of the side, itself.

1 JUDGE ADAMS: What's the container of this Redzisz reference --
2 what's it made of?

3 MR. WILSON: I'm sorry. I couldn't understand the question.

4 JUDGE ADAMS: Okay. The container in the primary reference --
5 what is its --

6 MR. WILSON: It's a cooler.

7 JUDGE ADAMS: What is its material made from? What is that
8 container made from?

9 MR. WILSON: It seems --

10 JUDGE ADAMS: Not what it seems to from the pictures? What is it
11 made -- what is it disclosed to be made from?

12 MR. WILSON: It's not -- it has similar materials in it, but it's got --

13 JUDGE ADAMS: Similar to what?

14 MR. WILSON: It's -- well, to be honest with you, I'm not sure I can
15 specify exactly what it's made of.

16 JUDGE ADAMS: Well, when you say similar, you're saying similar
17 materials as your container has in it. Right?

18 MR. WILSON: Well, it's got a foam layer. And it's got the
19 polyethylene thing. But you can make these things of various thicknesses
20 and stiffness.

21 JUDGE ADAMS: Uh-huh.

22 MR. WILSON: It doesn't --

23 JUDGE ADAMS: So, what you're arguing, as I'm understanding
24 you, is that I'm not going to look at the disclosure. I'm going to look at the
25 figures. And I'm going to hold up the figure and show you, "That looks
26 pretty stiff. And that wouldn't, from the figure, seem to be soft-sided."

1 MR. WILSON: The Examiner --

2 JUDGE ADAMS: Why should I agree with that?

3 MR. WILSON: The Examiner has the burden to make the case for a
4 soft-sided outer shell.

5 JUDGE ADAMS: But you just said that the material in Redzisz is the
6 same material that you're using. Right?

7 MR. WILSON: I think that the compositions are similar.

8 JUDGE ADAMS: So, why would that reference not teach a soft-
9 sided shell?

10 MR. WILSON: It doesn't necessarily teach a soft-sided shell, because
11 it describes nothing about it as soft-sided.

12 JUDGE ADAMS: So, it doesn't anticipate a soft-sided shell is what
13 you're saying? The -- it would probably be obvious. Right?

14 MR. WILSON: Not necessarily obvious at all, because it doesn't --
15 it's a container that's meant to fold along various defined lines.

16 JUDGE ADAMS: Uh-huh.

17 MR. WILSON: You wouldn't necessarily want a soft-sided shell
18 there.

19 JUDGE ADAMS: Uh-huh.

20 MR. WILSON: It actually looks to be a container that's meant to hold
21 and stay rigid when it's opened -- in its opened configuration. There's no
22 reason for it to be soft-sided, frankly.

23 JUDGE SCHEINER: Doesn't claim -- I mean -- I'm sorry.
24 Paragraph 30, collapsible insulated cooler case, and the inner edge is
25 comprised of a first flexible fabric, Section 10, and a second flexible fabric,
26 Section 12. And isn't that what we're talking about?

1 MR. WILSON: Yeah. It's unclear to me that it's that. But it's truly
2 soft-sided. It says flexible fabric, but it's how it's constructed. It doesn't
3 say that it's going to actually bend and fold -- the actual sides of it are going
4 to actually bend and fold easily.

5 Okay. So, again, we -- in that case, we believe that limitation has not
6 been satisfied by the prior art.

7 The other point is the motivation to combine. The Examiner's point is
8 that Zedgies has a -- is a box just like Redzisz and, therefore, they can take
9 the frame from Zedgies and apply it to Redzisz. It's our view that the
10 Redzisz box doesn't need a frame, and that's why there wouldn't be any
11 motivation to combine. You can -- again, you can see from the pictures.
12 There's no mention of a frame -- obviously, an internal removable frame in
13 Redzisz. Again, you can look at the pictures. It, it, it looks like a very solid
14 box. It stands open. You can, you can compress it closed along the crease
15 along the bottom, but it's still stands open.

16 And we raise the Item -- Paragraph 10, 0010. And the Examiner has
17 ignored that point that we raised. It says here, again, "Another object in the
18 invention is to provide a collapsible, insulated cooler case which includes a
19 bottom and side construction that is foldable, yet maintains its structural
20 integrity and shape when the case is fully open." I think that language
21 supports the view that when that box is fully open, it will stay opened. And
22 certainly, if you put anything in it, it will stay open. That's -- it's unlike the
23 case of the claimed invention, which is soft-sided outer shell. Basically, it
24 doesn't have any real form to it. It can easily -- it will be partially
25 collapsible when unsupported. That's -- it's entirely different here. Now --
26 and you can even see, when you look at the --

1 JUDGE ADAMS: Now --

2 MR. WILSON: Sorry.

3 JUDGE ADAMS: -- what do you mean in your claim that it's
4 partially collapsible when unsupported? That means that I have this box,
5 and I can push it into a collapsed position. Right? It's not -- it doesn't
6 necessarily mean that I have this box and if something is not supporting it,
7 it's going to fall down.

8 MR. WILSON: Well, it doesn't necessarily mean that. It --

9 JUDGE ADAMS: Okay.

10 MR. WILSON: It could include that in it.

11 JUDGE ADAMS: It could.

12 MR. WILSON: And --

13 JUDGE ADAMS: But, then again, it could stand there by itself.
14 Right? It doesn't have to shrink or, you know, if some external force pushes
15 on it, then it will collapse. But until that external force pushes on it, it's
16 solid. It stands on its own. Right?

17 MR. WILSON: The, the claimed invention says partially collapsible
18 when it's unsupported. That means --

19 JUDGE ADAMS: So, if someone pushes on it, it collapses.

20 MR. WILSON: Or if you just leave it, it will collapse.

21 JUDGE ADAMS: I don't think the claim necessarily goes that far.

22 MR. WILSON: Unsupported means it has to have some support.

23 JUDGE ADAMS: Okay.

24 MR. WILSON: So --

25 JUDGE ADAMS: Partially collapsible.

26 MR. WILSON: Just --

1 JUDGE ADAMS: When I push on it, it collapses. It doesn't mean
2 that it falls down on its own. Does it?

3 MR. WILSON: It means -- I think when it's unsupported, it's -- it
4 will partially collapse. That's what it means.

5 JUDGE ADAMS: Okay. Okay.

6 MR. WILSON: When it's unsupported. And reference to support is
7 some case of some sort of internal frame.

8 JUDGE ADAMS: Okay.

9 MR. WILSON: If you look at the frame of Zeddies -- if you look at
10 the box of Zeddies, it's basically held together by Velcro. The sides just
11 fold out normally. And -- so, that box has an internal frame in it. And you
12 can see basically why. The Examiner wants to put the Zeddies frame inside
13 the Redzisz box, an entirely -- an integral frame -- say it's obvious to put
14 that in there. I don't -- an ordinary skill in our view wouldn't be motivated
15 to put that kind of a frame inside that box. It stays open when it's open.
16 Why would it need a frame? It's an integral construction.

17 So, it's unlike the situation in our claimed invention, where you have
18 a soft-sided outer shell that can easily collapse. And, then, you put in that
19 frame to support it when you need it supported. So, there's -- that's our
20 argument for there's a lack of motivation to combine the basic frame of
21 Zeddies with the box of Redzisz. That underlies all the claims that have
22 been rejected.

23 JUDGE ADAMS: Does Zeddies talk about the use of some sort of
24 structural material in its construction of the box, outside of its discussion of
25 the frame? For example, if you take a look at Column 4 of Zeddies, in lines

1 24+, where he talks about the use of this thermal insulating or thermal
2 retentive material -

3 MR. WILSON: Uh-huh.

4 JUDGE ADAMS: - that may comprise a substantially rigid panel.
5 So, he's talking about something that's a little more substantial and closer to
6 Redzisz. Right? At least according to your arguments.

7 MR. WILSON: It has rigid panels, but you can see the thing is held
8 together by Velcro. If you look at the picture on the front, the sides are --
9 just the whole box falls flat. The sides come together and you just Velcro it
10 together. So, to me, the reason you would have a -- it would be -- one is
11 going to look at that and say, "Well, I could see why you might want an
12 internal frame on that thing." It's not held together that strongly and just
13 tied together with a little Velcro around the corners. That's not the same
14 kind of box as Redzisz.

15 JUDGE ADAMS: When it's tied together, even with the Velcro, does
16 it fall down by itself or is it fairly self-supporting?

17 MR. WILSON: It's probably won't fall down by itself. No.

18 JUDGE ADAMS: So, it's substantially similar to the Redzisz box.
19 Right?

20 MR. WILSON: Well, it's not integrally framed. And it's not going to
21 be as strong as an integrally framed contained.

22 JUDGE ADAMS: What's not integrally framed?

23 MR. WILSON: This box here under Zeddies_is not an integrally
24 framed box.

25 JUDGE ADAMS: But what are these rigid panels Zeddies talks
26 about?

1 MR. WILSON: They're talking about the sides.

2 JUDGE ADAMS: These foam --

3 MR. WILSON: They're foam panels. Right.

4 JUDGE ADAMS: Right.

5 MR. WILSON: They're not going to -- they'll fall flat outwards if the

6 Velcro --

7 JUDGE ADAMS: But doesn't Redzisz have foam panels, too?

8 MR. WILSON: It has foam inside it. Yeah.

9 JUDGE ADAMS: So, Zeddis talks about putting a frame inside of
10 its foam-paneled box. And you're saying that wouldn't be obvious to take
11 that frame and put it in a different foam-paneled box?

12 MR. WILSON: Because that other box doesn't need a frame. That's
13 the reason why. I mean, you could put a frame in any box. But the point is,
14 why would you be motivated to put it in this box? It's got integral
15 construction. When the box is open, in Paragraph 10 --

16 JUDGE ADAMS: Uh-huh.

17 MR. WILSON: - it says it's going to stay open.

18 JUDGE ADAMS: Okay.

19 MR. WILSON: Why would you want to put a frame in it? That's just
20 -- only, you know, hindsight tells you to put a frame in it, just for these
21 claims. But it doesn't -- no one would be motivated outside of the claims.

22 JUDGE GRIMES: You referred to Redzisz's box as integrally
23 framed. Can you point to me where that's described that way?

24 MR. WILSON: I'm not sure I can point to it. But I think -- you can
25 tell from the construction the sides are all together as one unit.

26 JUDGE GRIMES: But where's the frame?

1 MR. WILSON: Redzisz?

2 JUDGE GRIMES: Yeah.

3 MR. WILSON: Oh. I'm sorry. I misunderstood --

4 JUDGE GRIMES: You said it was integrally framed.

5 MR. WILSON: My apologies. I misunderstood your question. Our
6 view of the internal framing is just the way the box is designed, that it has
7 these lines, and it folds along these lines. And it also has these plates in the
8 bottom that you can see here. We think that -- our interpretation is that these
9 foldable lines and these plates make up what's essentially an internal frame.
10 It doesn't say inside the reference, "We have an internal frame." It's our
11 interpretation of the way this box folds and the way it's designed that it has,
12 in effect, an internal framing, because it folds in a consistent way every time
13 along these designed lines of folding.

14 JUDGE ADAMS: Well, if I can recast the question a little differently.
15 What is it in Redzisz disclosure that leads you to your interpretation, other
16 than his figure?

17 MR. WILSON: On Paragraph 10? I figured a lot of it in addition to
18 Paragraph 10.

19 JUDGE ADAMS: What about Figure 10? Or, excuse me, Paragraph
20 10 of Redzisz leads you to that conclusion that it's integrally framed?

21 MR. WILSON: That it's foldable, yet maintains its structural
22 integrity and shape when the case is fully opened. That, to me -- I read that
23 to mean that the case has got a structure that can hold up when it's opened.
24 So, that's -- that tells me that it has --

25 JUDGE ADAMS: Oh. Like a cardboard box, you mean?

26 MR. WILSON: Well, it's --

1 JUDGE ADAMS: Like a moving box?

2 MR. WILSON: But it can -- it can collapse down and open up. And
3 it collapses down in a regular way. And it opens back up and says it can
4 maintain its shape when opened. To me, it's got standard foldable lines
5 along which it folds, which reflect an -- you know, an internal frame
6 essentially.

7 JUDGE ADAMS: Okay.

8 MR. WILSON: In integral frame or internal frame. Not really
9 internal to the whole thing, but integral to the box, itself.

10 JUDGE ADAMS: So, any box, therefore, would necessarily, in your
11 opinion, be integrally framed?

12 MR. WILSON: No. It's --

13 JUDGE ADAMS: Like a moving box would be integrally framed,
14 because it doesn't fold down on its own when you put it together.

15 MR. WILSON: A box would be integrally framed if it folds on a -- in
16 a consistent pattern and it has these vertices along the edges that show where
17 the folding is occurring. Yes. I would say that's an integral frame.

18 JUDGE ADAMS: And why doesn't yours have an integral frame in
19 addition to an inner frame?

20 MR. WILSON: It's -- it just -- it will just fall down in a heap there.
21 It's just, like, all soft.

22 JUDGE ADAMS: Well, what part of your claim requires it to fall
23 down in a heap?

24 MR. WILSON: I'm describing what it can do. The claim just says
25 that it's partially collapsible and unsupported.

1 JUDGE ADAMS: Well, isn't a moving box partially collapsible?

2 If you apply external pressure to it, you can collapse that box. Right?

3 MR. WILSON: Well, you don't have -- there's no requirement that
4 you apply any external pressure.

5 JUDGE ADAMS: Okay.

6 MR. WILSON: All right. In terms of the -- this argument about these
7 two primary -- this primary and secondary reference applies to all the claims.

8

9 I'm going to just simply argue three other claims, 17 through 19,
10 which is over the additional reference of -- excuse me -- Travis. The
11 Examiner has -- 17 through 19 refer to the inner frame -- the removable
12 inner frame and require that the frame collapse and the two longitudinal
13 walls come together towards each other and some additional features in 18
14 and 19. The Examiner refers to Travis as a foldable internal frame. I think
15 that it's -- that there wouldn't be motivation to use this. The Examiner cites
16 to Figure 1 and Figure 2 of Travis. It's basically an entire box in itself and -
17 - with its own internal frame. And the Examiner says, "Well, this is an
18 internal frame that can be used with our box -- I mean, that can be used with
19 the Redzisz box." I think that's impractical that somebody with ordinary
20 skill would consider that this could be an internal frame. It's a stand-alone
21 box in its own right.

22 JUDGE ADAMS: Well, show me -- you're holding -- what figure are
23 you holding up?

24 MR. WILSON: Figures 1 and 2.

25 JUDGE ADAMS: Can you hold up Figure 4?

26 MR. WILSON: Sure.

1 JUDGE ADAMS: And tell me about that figure.
2 MR. WILSON: Yeah. That's an internal frame.
3 JUDGE ADAMS: That's an internal frame.
4 MR. WILSON: The Examiner ignored that.
5 JUDGE ADAMS: But isn't that the same frame that's in Figures 1
6 and 2?
7 MR. WILSON: Yes. It's in there.
8 JUDGE ADAMS: Okay.
9 MR. WILSON: But it's hidden in there, and it's just the dash lines.
10 JUDGE ADAMS: It's hidden in there?
11 MR. WILSON: Well, it's a dash line.
12 JUDGE ADAMS: Oh. So, therefore, we ignore it?
13 MR. WILSON: No. I'm not saying ignore it. The Examiner is citing
14 to the entire box with a -- has a frame. But he's actually pointing to --
15 basically --
16 JUDGE ADAMS: So, it has -- wait. Let's be clear. It has an internal
17 frame. Right?
18 MR. WILSON: Yes. It does. It has an internal frame, but the
19 Examiner is ignoring the internal frame. The Examiner is talking about the
20 folding aspects of the box -- the external box --
21 JUDGE ADAMS: Uh-huh.
22 MR. WILSON: -- and saying that's an internal frame that could be
23 used with Redzisz.
24 JUDGE ADAMS: Well, wait. I guess I'm missing that. You say the
25 Examiner is talking about the folding characteristics of the box --
26 MR. WILSON: Right.

1 JUDGE ADAMS: -- and saying that's an internal frame.

2 MR. WILSON: That he --

3 JUDGE ADAMS: What -- that what is?

4 MR. WILSON: That the Examiner --

5 JUDGE ADAMS: What part of that box is an internal frame?

6 MR. WILSON: It's the Examiner's position that the additional
7 features of the internal frame and claims 17 to 19 are met by this box.

8 JUDGE ADAMS: Uh-huh.

9 MR. WILSON: The box, which -- I mean, he points at Figures 1 and
10 2 that also includes, by the way, an internal metal frame.

11 JUDGE ADAMS: Uh-huh.

12 MR. WILSON: The Examiner doesn't talk about the internal metal
13 frame. He's really talking about the whole thing in Figures 1 and 2, which is
14 a stand-alone box, itself. We think that's -- that doesn't meet the
15 requirements to that claim. And, in fact, the Examiner has never pointed to
16 the metal internal frame of that box in Travis, which, by the way, wouldn't
17 meet any of the requirements of the claims at all.

18 JUDGE ADAMS: Well, isn't the Examiner's position that Travis
19 teaches this box that's capable of folding in a manner that you set forth in
20 your claim, suggesting that just because you fold -- you claim a box that
21 folds in a particular way. Well, that's noted in the art.

22 MR. WILSON: Well, we're claiming an internal frame that would go
23 inside a box that folds in a particular way. This is not an internal frame. It's
24 a box in itself.

25 JUDGE ADAMS: Well, even if -- assuming even if I agree with your
26 argument that this frame -- one, we completely ignore this particular frame

1 in this -- in Travis' teaching, you have that frame topped by the primary
2 combination of references, according to the Examiner. And, now, we're just
3 configuring this box with an internal frame in it to fold in a particular way
4 that's not by Travis. Right?

5 MR. WILSON: Well, that's not the Examiner's argument. The
6 Examiner's argument is not that you take the -- you know, the conceptual
7 aspects of folding herein and apply that to the frame in Zeddies. That would
8 be a little -- you know, you would have to say how you would do that. The
9 frame in Zeddies is a lot different from this kind of folding device.

10 JUDGE ADAMS: Well, as I read the Examiner's Answer, he says it
11 would have been obvious to one of ordinary skill in the art at the time the
12 invention was made to have incorporated the use of the frame structure as
13 disclosed by Travis in the container disclosed by the combination of Zeddies
14 and Redzisz or Redzisz. Is that right?

15 MR. WILSON: Yes. He does say that. The frame structure. Right.
16 The frame structure, but he's referring to Figures 1 and 2, which -- he's
17 referring to the whole thing. He has to be actually, because it has the base
18 that swings and that sort of thing.

19 JUDGE ADAMS: Uh-huh.

20 MR. WILSON: So, he's not referring to the metal frame.

21 JUDGE ADAMS: Okay.

22 MR. WILSON: Because that doesn't meet the requirements.

23 JUDGE ADAMS: And that would be your interpretation of the
24 Examiner's argument?

25 MR. WILSON: That he's not referring to the metal frame:

26 JUDGE ADAMS: Uh-huh.

1 MR. WILSON: Absolutely not referring to the metal frame. He can't
2 be.

3 JUDGE ADAMS: Okay.

4 MR. WILSON: He certainly doesn't meet the requirements of the
5 claim, for sure, on the metal frame. It doesn't have the longitudinal sides,
6 and it doesn't work, for sure. That's a -- that's an absolute requirement in
7 claim 17. It has to have longitudinal sides. There's none in the frame. The
8 metal frame has none. It's got the other two sides. Then, there's just a bar
9 between. So, Figure 4 doesn't cut it, for sure.

10 JUDGE SCHEINER: Did you have anything further?

11 JUDGE ADAMS: I don't. Thank you.

12 MR. WILSON: Thank you very much for your time.

13 (Whereupon, at approximately 9:28 a.m., the proceedings were
14 concluded.)

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Appeal 2008-1407
Application 10/629,322

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